Supreme Court, U.S.
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No. 05-

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID H. TEDDER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari
To the United States Court of Appeals
for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Notwithstanding dictum in *Libretti v. United States*, 516 U.S. 29, 49 (1995), do this Court's recent decisions from *Apprendi* (2000) to *Booker* (2005) extend to the determination of criminal forfeiture penalties the Sixth Amendment right to jury trial and related Fifth Amendment right to proof beyond a reasonable doubt?

Alternatively, in avoidance of the constitutional question, is a right to jury trial implicitly granted by the federal criminal forfeiture statutes, and has that right been improperly restricted by recent amendments to the Federal Rules of Criminal Procedure?

2. If, as held by the court below in disagreement with the trial court, the same property, or its value, may not be ordered forfeited criminally from different individuals in separate cases on different statutory bases, may the court of appeals nevertheless affirm a forfeiture judgment entered over such objection on the basis of a rhetorical question (masking a factual assumption) never raised by the government and which the defendant-appellant was never given an opportunity to rebut?

LIST OF ALL PARTIES

The caption of the case in this Court contains the names of all parties (petitioner Tedder and respondent United States). There were related prosecutions and appeals in the courts below, but no co-defendants or co-appellants.

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REASONS FOR GRANTING THE WRIT

1. The Seventh Circuit's ruling in this case that the judge could redetermine the amount of criminal forfeiture set by the jury, upon conceding errors in the instructions, without granting the defendant a new jury trial, conflicts with decisions of two other Circuits and implicates a question of fundamental importance -- whether there is a constitutional right to jury trial on all facts necessary to make out an allegation of criminal forfeiture 11

2. By allowing the government a double recovery of the same property, the Seventh Circuit's procedurally unfair ruling in this case violates the very essence of criminal forfeiture -- to take the defendant's interest in tainted property, or its equal, and nothing else ... 21

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

David Hampton Tedder respectfully petitions this Court for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit. The court below affirmed his convictions for money laundering and otherwise assisting a gambling business and consequent judgment of forfeiture, while remanding his sentence of imprisonment.

OPINIONS BELOW

The Seventh Circuit's precedential Opinion (per Easterbrook, J., with Cudahy and Williams, JJ.), was filed April 6, 2005; see *United States v. Tedder*, 403 F.3d 836. A copy is attached as Appendix A. The United States District Court for the Western District of Wisconsin (Crabb, Ch.J.) wrote several opinions, only one of which is germane to this petition. See *United States v. Tedder*, 2003 WL 23204849 (July 28, 2003) (discussing forfeiture verdict). That opinion is reproduced as Appendix B.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit affirming the applicant's convictions on federal money laundering and gambling conspiracy charges was filed and entered on April 6,

2005. Appx. A; see *United States v. Tedder*, 403 F.3d 836. Petitioner moved the court of appeals for an extension of time to petition for rehearing, but the authoring Circuit Judge denied such relief by Order filed April 21, 2005. By order dated June 24, 2005, under No. 04-A-1076, Justice Stevens extended until September 3, 2005 (a Saturday), the time within which to file a petition for certiorari. This petition is being filed on or before the first business day thereafter. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, FEDERAL STATUTE, AND RULE OF PROCEDURE INVOLVED

The Fifth Amendment to the Constitution of the United States provides, in pertinent part: "No person shall ... be deprived of life, liberty, or property, without due process of law ...." U.S. Const., amend. V.

The Sixth Amendment to the Constitution of the United States provides, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed ...." U.S. Const., amend. VI.

Section 982 of title 18, United States Code, provides for forfeiture as an additional sentence in connection with certain federal criminal convictions, and states, in pertinent part:

§ 982. Criminal forfeiture

(a)(1) The court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.

18 U.S.C. § 982(a)(1).

The Federal Rules of Criminal Procedure, as amended in 2000, provide, in pertinent part:

Rule 32.2. Criminal Forfeiture

* * * *

(b) Entering a Preliminary Order of Forfeiture.

(1) In General. As soon as practicable after a verdict or finding of guilty, or after a plea of guilty or nolo contendere is accepted, on any count in an indictment or information regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the applicable statute. If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense. If the government seeks a personal money judgment, the court must determine the amount of money that the defendant will be ordered to pay. The court's determination may be based on evidence already in the